

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

TIMOTHY LYNN BREWER,)	
)	
Plaintiff,)	
)	
)	
v.)	No. 1:11-cv-00104
)	Judge Campbell
RIC WILSON, et al.,)	Magistrate Judge Brown
)	
Defendants.)	
)	

To: The Honorable Todd J. Campbell

REPORT AND RECOMMENDATION

Presently pending before the Magistrate Judge is Plaintiff's Motion to Dismiss Without Prejudice. (Docket Entry 117). Defendants have filed a Response in opposition. (Docket Entry 120). For the reasons set forth below, the Magistrate Judge **RECOMMENDS** that the Motion be **GRANTED** and this case **DISMISSED without prejudice**.

Plaintiff requests his case be dismissed without prejudice while he seeks to exhaust his administrative remedies, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997. (Docket Entry 117). Defendants oppose this Motion, claiming that they will suffer plain legal prejudice if the Motion is granted.¹

The Magistrate Judge does not believe Defendants will suffer undue prejudice in dismissing this case. While Defendants have filed a Motion for Summary Judgment, no

¹ Defendants have also moved for summary judgment or, in the alternative, to dismiss. (Docket Entry 125).

significant efforts have been spent on discovery or preparation for trial. *See Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994). As Defendants admit, whether to grant such a voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(2) “is within the sound discretion of the district court.” *Id.* In *Grover*, the litigation was five years old when plaintiffs sought voluntary dismissal. *See id.* Here, Defendants claim prejudice for a delay of approximately three (3) months between Plaintiff definitely learning of the exhaustion requirement and his Motion. The Magistrate Judge cannot believe Defendants will suffer undue prejudice if Plaintiff is allowed to attempt to exhaust his administrative remedies.²

CONCLUSION

For the reasons stated above, the undersigned **RECOMMENDS** that the Plaintiff’s Motion to Dismiss be **GRANTED** and that this action be **DISMISSED without prejudice**.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from receipt of this Report and Recommendation within which to file with the District Court any written objections to the proposed findings and recommendations made herein. Any party opposing shall have fourteen (14) days from receipt of any objections filed regarding this Report within which to file a response to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation may constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140, *reh’g denied*, 474 U.S. 1111 (1986).

² Additionally, without commenting on the applicable grievance procedures, there is a strong possibility that Plaintiff cannot satisfy the exhaustion requirement at this late date.

ENTERED this 15th day of August, 2012.

/S/ Joe B. Brown
Joe B. Brown
United States Magistrate Judge